



## Appendix I.

### Partial List of Decisions and Text-Books in Which Phillips on Insurance Has Been Cited.

In this Court: *Insurance Company v. Transportation Company*, 79 U. S. 194, 196-7; *Hooper v. Robinson*, 98 U. S. 528, 536-7; *London Assurance v. Companhia De Moagens Do Barreiro*, 167 U. S. 149, 174-5; "We shall content ourselves in this respect by quoting the conclusion expressed in 2 Phillips on Insurance," *Canada Sugar Refining Co. v. Insurance Co. of North America*, 175 U. S. 609, 618, 619, 624-5; *Hagan v. Scottish Ins. Co.*, 186 U. S. 423, 430.

In the House of Lords: "In Phillips on Insurance \* \* \* that very experienced author," *Aitchison v. Lohre*, 4 App. Cas. 755, 763-4; *P. Samuel & Co. Limited v. Dumas* (1924), A. C. 431, 445; "That admirable writer on insurance law, Phillips," (*Norwich Union Fire Insurance Society v. Wm. H. Price, Ltd.* (1934), A. C. 455, 466.

In the Court of Common Pleas: *Dickenson v. Jardine*, L. R. Common Pleas Cases, Vol. III, pages 639, 642; "Mr. Willard Phillips' highly valuable work on Insurance," *Denoon v. The Home and Colonial Assurance Company*, L. R. Common Pleas Cases, Vol. VII, pages 341, 347-8; "a book of the highest authority as to English as well as American insurance law," *Harris v. Scaramanga*, L. R. Common Pleas Cases, Vol. VII, pages 481, 496; *Daniels v. Harris*, L. R. Common Pleas Cases, Vol. X, pages 1, 6, 7.

*Richards on the Law of Insurance*, §417 (4th Edit. 1932), says:

"\* \* \* it is worthy of mention that the English judges, as well as the American, often cite with approval a text book on this subject [Phillips on Insurance] written many years ago by a New England gentleman, which ranks in merit with the standard work of old England by Mr. Arnould."

*Arnould on Marine Insurance and Average*, the leading English text-book on marine insurance, cites *Phillips* constantly as authority on American law. It is interesting to note that in a footnote to Section 1117, which is cited by the Circuit Court of Appeals in the present case, Arnould states that

- “the 50% rule applies also in the United States in the case of damaged goods: see *Phillips*, s. 1608; *Washburn Manufacturing Co. v. Reliance Marine Insurance Co.* [1900], 179 U. S. 1.”

Accordingly, we have the rather curious situation that the Circuit Court of Appeals cites, as an authority on American law, an English text-book which, in turn, cites as its authority the work of *Phillips*, whose authority the Circuit Court of Appeals had declined to recognize.

## Appendix II.

For

Mr. A. Gracie  
Case & Opinion.

I have carefully considered the case of the Ship *Dauphin*. It is a case not without difficulty from some particular circumstances. But the result of my best reflections is this—(viz.)

The expences and the salvage decreed amount to not a great deal less than half the whole value. I do not think it can be said that it was the duty of the assured to advance so large an additional sum of capital to enable the vessel to prosecute her voyage (admitting that her condition at the time presented no serious obstacle to its prosecution). If not the sale for payment of the salvage was a necessary consequence; which includes the loss of the voyage as she did not reach her destination—and as I think would form a case proper for abandonment and recovery as for a total loss. The cargo being nearly absorbed in payment of salvage expenses.

If then the assured, when advise was received of the capture, recapture and amount of the salvage, abandoned or did what was equivalent to it, he ought to be satisfied as for a total loss.

If he did not then abandon or do what was equivalent he ought to be considered as having elected to take the chance of the market at the place of sale—& this would change the total into a partial loss—consisting of the amount of the salvage and expenses of law proceedings, repairs if any & other extra expenses.

A. HAMILTON,  
Sep. 1, 1800.